IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3538 OF 2007

Prabhakar M. Sontakke ....Petitioner
V/s.
Forest Development Corporation .
of Maharashtra Ltd. & Ors. ....Respondents

Ms.Seema Sarnaik for the Petitioner.
Mr.K.K. Malphatak for Respondent No.1.
Mr.A.H. Palekar, AGP for Respondent No.5.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 29TH JUNE, 2007.

P.C. :

1. The Petitioner was issued two chargesheets in respect of which the enquiry was conducted. The Enquiry Officer in respect of the first chargesheet held the Petitioner guilty of charges Nos.1, 2, 3, 5, 6 (a), (b) and (c) and in so far as charge No.4 is concerned, held to be partly proved. In respect of the second chargesheet also, the Enquiry Officer found that the Petitioner is guilty of both the charges. Based on these findings, the Disciplinary Authority imposed the penalty against the Petitioner herein of dismissal from service and also directed the recovery of certain amounts. Aggrieved the Petitioner preferred an Appeal before the Appellate Authority who

by his order dated 15.1.2001 dismissed the Appeal.

2. The Petitioner aggrieved, approached this Court by filing a Writ Petition No.6417 of 2001. By its order dated 16.10.2006, the learned Bench of this Court recorded the statement on behalf of the Petitioner, that he would be satisfied if the matter is remitted to the Appellate Authority for a fresh decision. Accordingly, the Appellate Authority passed the following order :-

> "We accordingly quash the order at Exhibit-K to the petition and remit the case to the Appellate Authority for a fresh and a reasoned decision in accordance with law. We also request the Appellate Authority to take a final decision in the matter within a period of three months from the date of receipt of this order. Should the petitioner fail before the Appellate Authority, he would be at liberty to come to this Court yet again. Writ Petition is accordingly disposed of. Rule is discharged".

3. Accordingly the matter was remanded back to the Appellate Authority who by the order of 7.2.2007

has dismissed the Appeal. It is this order which is the subject matter of the present Petition.

4. At the hearing of the Petition, the learned counsel for the Petitioner firstly submits that the Appellate Authority has not given any reasons and as such the order is liable to be set-aside. We have perused the impugned order. The Appellate Authority has noted the various grounds raised by the Petitioner in the Appeal memo and has answered each and every ground.

5. It is next contended that at the stage of remand, perusing the judgment of *Anil Amrut Atre vs. District & Sessions Judge, Aurangabad, (2002)3 Mh.L.J. 750*, the Appellate Authority was bound to give a fresh hearing to the Petitioner herein. The learned Full Bench of this Court construed the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and held that an Appellant who has preferred an Appeal was entitled for hearing in person and secondly mere concurring with the order is not sufficient reason and independent reasons have to be given.

6. On behalf of the Respondents the learned

counsel drew our attention to the judgment of the Supreme Court in the case of - *State Bank of India, Bhopal vs. S.S. Koshal, 1994 Supp.(2) Supreme Court Cases 468*, where one of the contention was raised that the Appellate Authority had to pass a speaking order. Our attention was drawn to the following observations in the judgment of the Supreme Court : "In view of the fact that it was an order of affirmance, we are of the opinion that it was not obligatory on the part of the appellant, authority to say more than this as the order as it is, shows application of mind. The order cannot be characterised as a non-speaking order."

. Considering the view to be taken, we do not propose to go into the issue as it appears that the judgment of the Apex Court was not bought to the attention of the Full Bench.

7. At any rate, in the instant case, even assuming that the judgment of the Full Bench requires a personal hearing to be given, in the instant case Petitioner, had moved this Court. The impugned order was set-aside and the matter was remanded back to the Appellate Authority to pass a fresh order by giving reasons. The order of remand of this Court did not direct giving a personal hearing while disposing of

this matter. In our view, the Appellate Authority was bound by the order of remand and could not travel beyond this order.

8. The other aspect of the matter is that the Appropriate Authority has considered the grounds raised and has answered them by reasons. In the light of that, we find no merits in the Petition, which is accordingly rejected.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)